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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.908 OF 2006
IN
SUIT NO.669 OF 2005

Ravi Vijay Shah ... Plaintiff

V/s.

Simishah Estates & Trading Co. Pvt. Ltd. ... Defendant

Mr.V. Chandrashekhar for Plaintiff
Mr.Darshan Mehta for Defendant No.1
Ms.Alpana Ghone with Ms.P.L. Bachani for Defendant Nos.2 and 3

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 12, 2006**

P.C.:

. The present Motion has been filed for an injunction against the defendants from creating any third party rights or parting with the possession of or transferring the 805 equity shares of Defendant No.1. The appointment of the Receiver has also been sought in respect of these shares. A prayer is also made that the benefits in respect of these shares be issued to the plaintiff till the disposal of the suit, including the benefit of dividend, bonus shares and rights shares.

2. The learned Counsel for Defendant Nos.2 and 3 raises an objection regarding the jurisdiction of this Court to decide the present suit and therefore, the Notice of Motion as well. She submits that the Plaintiff has already filed a Petition before the

Company Law Board under section 111 of the Companies Act. According to the learned Counsel, the plaintiff can get the reliefs he is seeking in the present suit before the Company Law Board and therefore, this suit should not be entertained.

3. As against this, the learned Counsel for the plaintiff submits that the cause of action in the present suit has arisen because Defendant No.1 has refused to accept him as the holder of the 805 suit shares and to transfer the shares to his name. He submits that the provisions of section 111 of the Companies Act are only in respect of rectification of register of members where the challenge to the refusal by the Company Law Board to register the shares in the transferee's name can be made. According to the learned Counsel, once the shares have been lodged with the Company for transfer, the Company is bound to transfer the shares irrespective of the ownership rights of the transferor. He relies on the judgment of the Calcutta High Court in the case *Smt.Nupur Mitra & Anr. v/s. Basubani (P) Ltd. & Ors.,* **(1999) 35 CLA 97 (Cal.)** to support his contention.

3. Section 111 of the Companies Act deals with the power of the Company to refuse registration of shares. An appeal against such refusal is provided. Subsection (1) of section 111 affords a remedy to a transferor or a transferee to challenge the refusal within two months

from the date of notice of refusal by the Company to transfer the shares. Subsection (3) provides that an appeal may be preferred within two months of the receipt of the notice of refusal or when no notice has been sent by the company, within four months from the date on which the instrument of transfer was delivered to the Company. Subsections 5, 6 and 7 of section 111 deal with the powers of the Tribunal to deal with the appeal. Subsection 7 clause (a) empowers the Tribunal to decide any question relating to the title of any person who applies to have his name entered in, or omitted from the Register. In such circumstances, in my view, the Company Law Board is clothed with sufficient powers to decide the title of the plaintiff qua the suit shares.

4. The decision of the Calcutta High Court in *Smt.Nupur Mitra & Anr. (supra)* need not detain me. A suit was filed for cancellation of the shares allotted. An application under section 111 of the Companies Act for ratification of the register was also filed, later. The Calcutta High Court in such circumstances has held that the Company Law Board could not refuse to exercise its jurisdiction under section 111. The Court has held that the Company Law Board ought to have decided all issues which it was empowered to determine rather than leaving them to the Civil Court.

5. Admittedly, an appeal has been preferred under section 111(4) of the Companies Act by the Plaintiff,

prior to filing of the Suit. Therefore, there is no need to grant any ad-interim relief. Ad-interim relief refused.